

FILED  
TULARE COUNTY SUPERIOR COURT  
SOUTH COUNTY JUSTICE CENTER

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AUG 24 2016  
LARAYNE CLEEK, CLERK  
BY: *No. 16*

5 Attorneys for Non-Party Deponent  
6 PAUL WILLIAM GRENIER

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF TULARE  
10 PORTERVILLE DIVISION

11 BOB GRENIER, an individual; GAYLE  
12 GRENIER, an individual;

13 Plaintiffs,

14 vs.  
15 TIM TAYLOR, an individual; ALEX  
16 GRENIER, an individual; and DOES 1 TO 50

17 Defendants

Case No.: VCU 249252

Assigned For All Purposes To:  
Hon. Glade Roper

Department 16

**NON-PARTY DEONENT PAUL  
WILLIAM GRENIER'S NOTICE OF  
MOTION AND MOTION FOR  
PROTECTIVE ORDER; MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

[Declarations of Paul William Grenier and Alan  
J. Gordee filed concurrently herewith]

Date: October 5, 2016

Time: 8:30 am

Dept.: 16

Action Filed: October 17, 2012

Trial Date: December 1, 2016

1                   **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2                   **PLEASE TAKE NOTICE** that on October 5, 2016 at 8:30 a.m., or as soon thereafter as  
3 counsel may be heard in Department 16 of the above-entitled court, located at 300 East Olive,  
4 Porterville, CA 93257, Non-Party Deponent Paul William Grenier will move the Court for a  
5 protective order concerning his deposition testimony. Mr. Grenier has been subpoenaed to appear for  
6 his deposition and is informed and believes the questioning will concern the allegations of physical  
7 and sexual abuse that form the basis of the Complaint in this action. Mr. Grenier does not seek an  
8 order limiting the deposition questioning. Rather, he seeks an order that such deposition testimony  
9 and transcript be marked confidential so that the parties are precluded from disclosing it outside of  
10 court proceedings and may only use it in connection with the litigation, unless specifically authorized  
11 by the Court to do otherwise. The protective order proposed by Non-Party Deponent Paul William  
12 Grenier is attached as Exhibit F to the Declaration of Alan J. Gordee filed concurrently herewith.

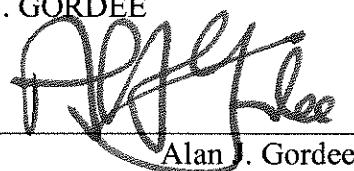
13                  This Motion will be, and is, made pursuant to Code of Civil Procedure § 2025.420 and is  
14 necessary to preserve Mr. Grenier's right to privacy as protected by the California Constitution,  
15 Article I, §1. This Motion is further based on this Notice, the attached Memorandum of Points and  
16 Authorities, the Declarations of Alan J. Gordee and Paul William Grenier, filed concurrently  
17 herewith; upon the records and files in this action; and upon such further evidence and argument as  
18 may be presented prior to or at the time of hearing on the Motion. This Motion is made following the  
19 conclusion of meet and confer discussions between the parties.

20 Dated: August 23, 2016

GORDEE, NOWICKI & BLAKENEY LLP

ALAN J. GORDEE

21 By: \_\_\_\_\_  
22 \_\_\_\_\_  
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The image shows a handwritten signature in black ink, which appears to read "Alan J. Gordee". It is written in a cursive style with some loops and variations in letter height.

Alan J. Gordee

Attorneys for Non-Party PAUL WILLIAM GRENIER

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Complaint in this action alleges that Defendant Alex Grenier (“Defendant”) defamed Plaintiffs Bob and Gayle Grenier (“Plaintiffs) and intentionally inflicted emotional distress on them by, among other things, falsely accusing Plaintiff Bob Grenier on social media, websites and internet blog posts of physical and sexual abuse. Non-Party Deponent Paul William Grenier (“Grenier”) is not a plaintiff or defendant in this action. He is an alleged witness to some of the allegations leveled by Defendant against Plaintiffs. Grenier has been subpoenaed by the parties to give a deposition. Grenier’s deposition is currently in abeyance pending this Court’s ruling on this Motion. Grenier, however, remains under subpoena and has agreed to appear after this Motion is decided by the Court.

Grenier believes that Plaintiffs and Defendant intend to depose him about matters related to Defendant's allegations of physical and sexual abuse. He does not seek by this Motion to limit such inquiries. But he is concerned about how his testimony may be used after he has given it. Specifically, Grenier is concerned that Defendant will excerpt some of the testimony and post those excerpts on his Facebook page or other social media or websites. This is not an idle concern as Defendant has made such posts in the past with respect to other depositions taken in this lawsuit. Given the nature of the testimony Grenier believes the parties may attempt to elicit, such disclosure beyond the legitimate needs of the parties in the litigation will subject him to unnecessary annoyance, embarrassment and oppression. Accordingly, by this Motion, Grenier seeks a protective order to prevent the parties from disclosing his deposition testimony to persons who have no legitimate use for it and to cabin its use only for purposes of this litigation.

## II. BACKGROUND

23 Plaintiffs allege in the Complaint that they are the mother and stepfather of Defendant.  
24 Complaint, ¶ 8. They allege that Defendant has conducted a “cyber-bully hate campaign” against  
25 them by, among other things, accusing Plaintiff Bob Grenier of being “a liar, thief, child-molester,  
26 pedophile, spousal abuser, master manipulator, cult leader, and evil person” who is “operating  
27 [Calvary Chapel-Visalia] for the sole purpose of stroking [his] ego, lining his wallet with wrongfully  
28 taken church tithes, and promoting a hidden agenda that solely promotes only [their] lifestyle.” *Id.*,

¶¶ 15, 17. In connection with Defendant's "cyber-bully hate campaign," Plaintiffs allege, he "utilize[es] the internet to contact more individuals and post more hateful rhetoric." *Id.*, ¶ 18. Specifically, Plaintiffs allege that Defendant posts "information about [Plaintiffs] daily, if not hour-by-hour, utilizing a minimum of nine internet websites, including two websites that are owned and moderated by [Defendant] himself, for the sole purpose of continuing the hate campaign aimed at ruining the credibility of [Plaintiffs], threatening their livelihood, as well as intimidating and threatening [Plaintiffs'] health and safety. *Id.*, ¶ 19. Plaintiffs allege that Defendant has made more than 6,000 social media posts about them. *Id.*

As a result, Plaintiffs brought this action. In it, they assert claims for, among other things, intentional infliction of emotional distress, libel and slander, and seek general, specific and punitive damages. In connection with this lawsuit, the parties have engaged in discovery, including depositions. Defendant has in the past posted commentary on social media about such discovery, including summarizing or otherwise disclosing or commenting on the testimony elicited during such depositions. *See* Declaration of Paul William Grenier ("Grenier Decl."), ¶ 3; Ex. A.

### III. ARGUMENT

#### A. The Court Has The Power to Issue A Protective Order To Govern The Use Of Deposition Testimony

For good cause shown, the Court may grant a protective order to control deposition proceedings or the information obtained in an deposition. *See* Cal. Civ. Proc. Code § 2025.420. Indeed, the Court is empowered to issue whatever order "justice requires" to protect a party from "unwarranted, annoyance, embarrassment, or oppression . . ." Cal. Civ. Proc. Code § 2025.420(b); *see Brigante v. Huang*, 20 Cal. App. 4th 1569, 1583 (1993) ("The court is empowered to fashion a remedy that will do justice in the situation with which it is confronted"). This protection can be obtained by any party or non-party deponent. Cal Civ. Proc. Code § 2025.420(a). This protection extends to the dissemination of information obtained through pretrial discovery, which is not automatically part of the public domain. Indeed, the Court may use a protective order to prohibit public disclosure of deposition testimony that has not yet been introduced into evidence at a public trial. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984).

1           **B.       Grounds Exist For A Protective Order Limiting The Parties' Use Of Grenier's**  
2           **Deposition Testimony**

3           The constitutional right of privacy is a fundamental liberty arising from both the United States  
4           and the California Constitutions. *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Eisenstadt v. Baird*,  
5           405 U.S. 438 (1972); *Morales v. Superior Court*, 99 Cal. App. 3d 283, 289 (1979); *Fults v. Superior*  
6           Court, 88 Cal. App. 3d 899, 903–904 (1979). The California right has been described as a protective  
7           “zone of privacy” surrounding sexual behavior. *Fults*, 88 Cal. App. 3d at 904. It is grounded in a  
8           1972 initiative by which the voters of California added the right of privacy to Article I, Section 1 of  
9           the California Constitution. See *White v. Davis*, 13 Cal. 3d 757, 773–775 (1975). The right has been  
10          reaffirmed by the California Supreme Court in *Vinson v. Superior Court*, 43 Cal. 3d 833, 841 (1987)  
11          (“California accords privacy the constitutional status of an ‘inalienable right,’ on a par with defending  
12          life and possessing property” and the “privacy protection … embraces sexual relations.”). Aspects of  
13          the right of privacy, such as associational privacy, the privacy of personal bank records, and the right  
14          of sexual privacy, may be asserted by a litigant by refusing to answer questions which “unreasonably  
15          intrude” on the right. *Fults*, 88 Cal. App. 3d at 903; *Britt v. Superior Court*, 20 Cal. 3d 844 (1978)  
16          (associational privacy); *Valley Bank of Nevada v. Superior Court*, 15 Cal. 3d 652 (1975) (bank  
17          records).

18          Of course, the privacy right is not absolute and disclosure may be compelled in court  
19          proceedings. *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 131 (1980); *Loder v. Municipal*  
20          *Court*, 17 Cal. 3d 859, 864 (1976); *White v. Davis*, 13 Cal. 3d at 775. One such interest, evidenced  
21          by California’s broad discovery statutes, is ““the historically important state interest of facilitating the  
22          ascertainment of truth in connection with legal proceedings.”” *Britt*, 20 Cal. 3d at 857. The party  
23          seeking court-ordered discovery must shoulder this heavy burden, and must establish more than  
24          “merely … a rational relationship to some colorable state interest”; “[o]nly the gravest abuses,  
25          endangering paramount interests, give occasion for permissible limitation” on the right of privacy.  
26          *Morales*, 99 Cal. App. 3d at 290 (quoting *Britt*, 20 Cal. 3d at 855). Courts “must balance the right of  
27          civil litigants to discover relevant facts against the privacy interests of persons subject to discovery.”  
28          *Vinson*, 43 Cal. 3d at 842 (quoting *Valley Bank*, 15 Cal. 3d at 657).

1       When an individual's right of privacy conflicts with the public need for discovery in  
2 litigation, the competing interests must be carefully balanced. *Valley Bank of Nevada*, 15 Cal. 3d at  
3 657. Even where the balance weighs in favor of disclosure of private information, an intrusion upon  
4 privacy may only be done on the basis of ““practical necessity”” (*Fults*, 88 Cal. App. 3d at 904–905)  
5 and “the compelled disclosure [must] be narrowly drawn to assure maximum protection of the  
6 constitutional interests at stake.” *Britt*, 20 Cal. 3d at 859.

7       Here, unlike the situations in the cases cited above, Grenier does not seek to restrict the scope  
8 of discovery or deny that Plaintiffs and Defendant are entitled to discover the details of his past that  
9 concern the allegations of the Complaint and the defenses to those allegations. Rather, Grenier  
10 simply requests that the Court limit the parties' use of his deposition testimony. He requests that the  
11 Court issue a protective order “limiting dissemination of the information [in his deposition transcript]  
12 to counsel for the parties and to such other persons related to the litigation” to whom counsel believes  
13 such dissemination is necessary to prepare the matter for trial. *Moskowitz v. Superior Court*, 137 Cal.  
14 App. 3d 313, 315 (1982). Stated another way, Grenier seeks only to prevent disclosure of the  
15 testimony he may give relating to the allegations of the Complaint to persons who have no legitimate  
16 interest in its use for purposes of the litigation. The fact that Grenier is attempting to restrict the use  
17 of the facts discovered in his deposition, rather than the scope of the discovery itself, however, does  
18 not justify denial of his constitutional right of privacy in the personal information that may be  
19 divulged during his deposition.

20       A substantial probability exists that Grenier's overriding privacy interest will be prejudiced if  
21 the use of his deposition testimony is not limited to matters relating to this litigation. Grenier is  
22 informed and believes both Plaintiffs and Defendant intend to depose him as to matters related to  
23 Defendant's allegations of physical and sexual abuse. The Complaint itself arises from Defendant's  
24 alleged publication of defamatory statements about Plaintiffs in internet postings. Grenier is aware  
25 that Defendant has made numerous internet postings about this lawsuit and uses the internet to  
26 comment on, among other things, deposition testimony taken in discovery during this lawsuit. *See*  
27 Grenier Decl., ¶ 3; Ex. A. Based on Defendant's previous behavior, there is a substantial probability  
28 Grenier's right to privacy will be violated if the parties are not ordered by the Court to use the

1 testimony elicited in his deposition only in connection with the litigation and for no other purpose  
2 such as to publicize Defendant's litigation position or to comment on the coerced testimony of  
3 Grenier in social media or internet websites or blog postings.

4 Given Defendant's past publication of deposition testimony and other discovery proceedings  
5 in this lawsuit on social media such as Facebook and internet websites and in blog postings, Grenier  
6 has clearly established a factual showing of the potential invasion of his privacy and the annoyance,  
7 embarrassment or oppression that would result from the parties' unlimited use of his deposition  
8 testimony. *See* Grenier Decl., ¶¶ 3-4; Ex. A.

9 Indeed, Grenier is presumptively entitled to a protective order limiting dissemination of the  
10 testimony contained in his deposition, and the burden therefore is on Defendant to show that such  
11 relief is not warranted. *Richards v. Superior Court*, 86 Cal. App. 3d 265 (1978). In *Richards*, the  
12 court stated:

13 [W]here a party is compelled in civil discovery to reveal financial information because  
14 the information is relevant to the subject matter of a claim for punitive damages, that  
15 party is, upon his motion, presumptively entitled to a protective order that the information  
16 need be revealed only to counsel for the discovering party or to counsel's representative,  
17 and that once so revealed, the information may be used only for the purposes of the  
18 lawsuit. The burden is on the opposing party to establish a substantial reason why the  
19 order should be denied. That reason must be related to the lawsuit.

20 *Richards*, 86 Cal. App. 3d at 272.

21 Moreover, as the court observed in *Richards*:

22 Discovery seeking financial information by reason of a claim for punitive damages is one  
23 classic instance of the manner in which civil discovery is used to achieve a litigation  
24 advantage never contemplated when the methodology was introduced into pretrial  
25 procedure .... [T]here is usually the potential that untoward disclosure of the information  
26 obtained may in some way or other react adversely against the disclosing party for  
27 reasons totally unrelated to the lawsuit. The possibilities run all the way from greater  
28 exposure to the not so gentle solicitations of some charitable organizations to the

1           possibility of damage to the discloser in the competitive business arena.... [¶] ... It seems  
2           a rare instance indeed that the potential of disclosure for purposes unrelated to the lawsuit  
3           or to persons other than counsel and their representatives serves any purpose except to  
4           give a tactical edge to the party who has obtained discovery of the information by  
5           allowing that party the benefit of pressure in settlement negotiations by threat or  
6           implication of disclosure.

7 *Richards*, 86 Cal. App. 3d at 271-272.

8           While the protective order in *Richards* was sought by a defendant against whom a claim for  
9           punitive damages was asserted, its reasoning is applicable here, where a non-party is seeking a  
10          protective order limiting to legitimate purposes the use of his coerced testimony concerning his  
11          personal sexual and medical history obtained through discovery in a case in which he has no personal  
12          interest because he is not even a party. Accordingly, the burden is upon Defendant to establish a  
13          reason, related to the lawsuit, for denial of the protective order sought by Grenier.

14 **IV. CONCLUSION**

15           Although the allegations of the Complaint may make Grenier's testimony discoverable, these  
16          allegations do not strip him of his right to privacy. Indeed, his privacy is presumptively entitled to  
17          protection: "The one whose privacy is involved is presumptively entitled to a protective order  
18          limiting the use of the information to the litigation itself, and barring its dissemination for purposes  
19          not related to a fair resolution of the action." *Babcock v. Superior Court*, 29 Cal. App. 4th 721, 728  
20          (1994). Grenier merely seeks an order requiring the parties to use his coerced testimony only for  
21          purposes of the litigation and he specifically seeks to prevent the parties (in reality, Defendant) from  
22          using his coerced testimony in ways unrelated to the litigation and specifically to preclude the parties  
23          from posting that testimony on social media, on his or any websites, or in blog posts. For the  
24          foregoing reasons, Grenier respectfully requests the Court enter a protective order that makes his

25          ///

26          ///

27          ///

28          ///

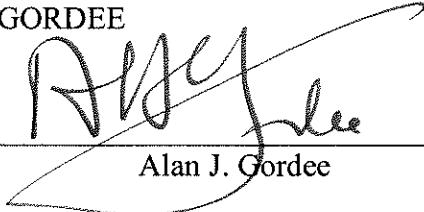
1 deposition testimony confidential and prevents the litigants, and especially Defendant, from using it  
2 outside of Court proceedings or disclosing it to any third party unless specifically authorized by the  
3 Court.

4 Dated: August 23, 2016

GORDEE, NOWICKI & BLAKENEY LLP

5 ALAN J. GORDEE

6 By: \_\_\_\_\_



7 Alan J. Gordee

8 Attorneys for Non-Party Deponent PAUL GRENIER

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## CERTIFICATE OF SERVICE

I, Bobbi Lauer, declare as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 100 Spectrum Center Drive, Suite 870, Irvine, California 92618, in said County and State. On August 23, 2016, I served the following document(s):

**NON-PARTY DEPONENT PAUL WILLIAM GRENIER'S NOTICE OF MOTION AND  
MOTION FOR PROTECTIVE ORDER; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

on the parties stated below:

Ronald Brilliant, Esq.  
Brilliant Law Office  
3327 N. Eagle Road 108  
Meridian, Idaho 83646

Nick Albert Pritchett, Esq.  
Williams Brodersen & Pritchett LLP  
2222 W. Main Street  
Visalia, CA 93291

*Attorneys for Defendant Alex Grenier*

Telephone: 208/914-7150  
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Email: [rb@brilliantlawoffice.com](mailto:rb@brilliantlawoffice.com)

*Attorneys for Plaintiffs Bob Grenier and Gayle Grenier*

Telephone: 559/635-9000  
Facsimile: 559/635-9085  
E-Mail: nick@wbplawyers.com

by the following means of service:

- BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**BY PERSONAL SERVICE:** I emailed a true copy of this document to a messenger with instructions to personally deliver it to each person[s] named at the address[es] shown before 5:00 p.m. on the above-mentioned date.

**BY OVERNIGHT SERVICE:** On the above-mentioned date, I placed a true copy of the above mentioned document(s), together with an unsigned copy of this declaration, in a sealed envelope or package designated by Federal Express with delivery fees paid or provided for, addressed to the person(s) as indicated above and deposited same in a box or other facility regularly maintained by Federal Express or delivered same to an authorized courier or driver authorized by Federal Express to receive documents.

**BY E-SERVICE VIA ONE LEGAL:** I caused each such document(s) to be served by electronic service via One Legal. Complying with Code of Civil Procedure § 1010.6, I caused the above-entitled document(s) to be served through One Legal at [www.onelegal.com](http://www.onelegal.com) on the interested parties in said action.

**BY ELECTRONIC SERVICE:** On the above-mentioned date, I caused each such document to be transmitted by electronically mailing a true and correct copy through Gordee, Nowicki & Blakeney LLP's electronic mail system to the e-mail address(s) set forth above.

**(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. *[Handwritten signature]*

Executed on August 23, 2016.

  
Bobbi L. Bauer

Bobbi Lauer